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# COMPARISON OF SAMPLE CLAUSES FOR CONTRACTS FOR THE INITIAL MANAGEMENT OF A FACTORY FOR THE ASSEMBLY OR MANUFACTURE OF AGRICULTURAL MACHINERY AND THE RENDERING OF TECHNICAL ASSISTANCE ANCILLARY THERETO*

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The purpose of this document is to draw together the various types and versions of the clauses contained in drafts and precedents of the contract under consideration. It is essentially a research document, drawing on existing material and not seeking to furnish any new ideas on the possible approaches to issues in contractual relations.

The headings of the contract clauses dealt with in this document appear in the middle column of the "Contents" on the next page. The clause numbers are given in the right hand column. Reference is then made in the left hand column to the "Status" of the clauses considered. The letters "N", "R" and "O" stand for "Necessary", "Recommended" and "Optional" respectively. This classification indicates the degree of importance attached to the inclusion in the contract of a clause dealing with the issue raised in the corresponding clause heading. Thus, it is felt, a clause whose heading is assigned the status "Necessary" should appear in some form in the contract, even if it is not included in terms of any of the examples provided in this document.

On the page following the "Contents" there is an example of the preamble sometimes included in contracts. The recitals contained in a preamble serve to describe, if very briefly, the setting and conditions in which the agreement between the parties has been concluded. Under legal systems which take preambles into account, these can be of assistance in interpreting the clauses of contracts should a dispute later arise. Some legal systems, however, ignore the recitals contained in the preamble to a contract.

The major part of this document is given over to samples of the clauses which can be included in the contract under consideration. The examples appear in tabulated form. In some instances only one example is given of the possible terms of a clause dealing with the issue raised in the clause heading (left hand column of the table), in others two or three examples are provided. The fifth column, headed "Additions", contains extra material which supplements rather than replaces the examples given of a particular clause. The last column of the tables indicates, in abbreviated form, the sources from which the examples and additions have been generally drawn. The sources referred to above are set out in full in the last page of this document.

As recommended by the Second Consultation on the Agricultural Machinery Industry, the sources drawn from include the documentation considered by that Consultation, the views expressed on it, other relevant national and international material, the views of the participants in the Consultation and other interested parties and the experience gained by the Secretariat in work on contractual agreements.

| Clauses | Headings | Status |
|---|---|---|
| 1 | Definitions | R |
| 2 | Substantive Transaction | N |
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| 4 | Preliminary Obligations | N |
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| 6 | Orders | O |
| 7 | Packing | R |
| 8 | Technical Documentation and Tool Kits | R |
| 9 | Dispatch, Transport and Delivery | N |
| 10 | Delays in Delivery | N |
| 11 | Delays in the Purchaser's Acceptance of Delivery | O |
| 12 | Verification of Apparent Conformity | R |
| 13 | Prices | N |
| 14 | Payment | N |
| 15 | Warranties | N |
| 16 | Guarantee | O |
| 17 | Purchaser's Undertaking | R |
| 18 | Third Party Indemnity | R |
| 19 | Import and Export Licences and Taxes | O |
| 20 | Ownership of Documents | R |
| 21 | Change Orders | R |
| 22 | Assignment | R |
| 23 | Notices | N |
| 24 | Termination | N |
| 25 | Rights at Termination | N |
| 26 | Force Majeure | R |
| 27 | Limitation of damages | R |
| 28 | Language | R |
| 29 | Resolution of Disputes | R |
| 30 | Applicable Law | N |
| 31 | Duration of the Contract | O |

| | |
|---|---|
| Spare parts | OO |

THIS AGREEMENT is made BETWEEN of
(hereinafter called "the purchaser") and of
(hereinafter called "the supplier")

WHEREAS: -

1. The purchaser is desirous of commencing a business in the supply of spare parts for, and the maintenance and repair of, agricultural machinery;

2. The supplier has, for a considerable number of years, carried on the business of the manufacture and supply of spare parts for, and the maintenance and repair, of agricultural mahcinery and -

(a) possesses substantial valuable knowledge of a specialized nature relating to the methods and techniques in the operation and management of the business of the supply of spare parts for, and the maintenance and repair, of agricultural machinery, and continues to acquire information, skills, expertise and reputation relative to the supply of spare parts, for and the maintenance and repair of, agricultural machinery
(b) has acquired substantial knowledge, skill and expertise in the efficient and proper management and operation of the business of supplying spare parts for, and the maintenance and repair of, agricultural machinery and, in particular, in the most efficient and optimum methods of initiating and establishing such a business;
(c) has acquired expertise in the training of personnel for the management and operation of such a business;

3. The purchaser is desirous of acquiring spare parts for agricultural machinery from the supplier and of acquiring and having the advantage of all the supplier's said and future technical knowledge, expertise, information and skill in the management and operation of the business of the supply of spare parts and the maintenance and repair of agricultural machinery.

4. The supplier is mindful that the purchaser has available to him/her in his/her own country a lesser tradition in industry, trade and business than has the supplier and that the consummation of this agreement is intended to aid and be in the interests of the industrial, trade and economic development of the purchaser's country.

Now, in CONSIDERATION of the premises and of the mutual covenants and conditions hereinafter contained, the parties hereto have agreed and do by these presents agree as follows:-

DEFINITIONS
R

1.1 For the purposes of this contract the following words shall be interpreted thus: -

- "assemblies and sub-assemblies" - components of the products which are manufactured by the supplier or, in the case of authorized components, for him/her, and which are supplied in an assembled form and classified under one heading in the supplier's catalogue.

- "authorized components" - spare parts, assemblies and sub-assemblies manufactured by a person other than the supplier for the supplier or for distribution by him/her and which are included in the supplier's catalogue

- "conformity" - the presence in the spare parts of all the conditions of quality, fitness, merchantability and compliance with the specifications as warranted in this contract.

- "contract" - this agreement including all the appendices and attachments hereto and all documents referred to in this contract

- "products" - all the equipment, machinery, accessories and other apparatus present in the purchaser's country which incorporates or uses the spare parts.

- "spare parts" - those parts, including assemblies, sub-assemblies, and authorized components, of equipment, machinery, accessories and other apparatus now listed in the suppier's catalogue, and manufacture by him/her or, in the case of authorized components, ditructued by him/her, together with any other parts manufactured by the supplier in the future or in the case of authorized components, distributed by him/her, together with any other parts manufactured by the supplier in the future or in the case of authorized components, distributed by him/her during the currency of this contract.

- "specifications" - The standards and performance indicators of the spare parts particularized in Appendix ... . "Specifications" also refers to the descriptions of the spare parts, their characteristics, quality and performance capacities as stated by the supplier.

| HEADINGS | EXAMPLE I | EXAMPLE II | EXAMPLE III | ADDITIONS | SOURCE |
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| SUBSTANTIVE TRANSACTION N | 2.1 Subject to the terms of this contract, the supplier shall sell and deliver to the purchaser at the latter's request the spare parts the subject matter of this contract and shall afford the purchaser the advice hereinafter specified in consideration of the payment by the purchaser of the purchase prices from time to time applicable in accordance with this contract in respect of the said spare parts (where applicable add: ..... and in consideration of the purchaser's undertaking hereinafter given). | 2. Subject to the terms of this contract, the supplier will sell and deliver to the purchaser at the latter's request the spare parts the subject matter of this contract and will provide the purchaser with technical assistance to enable the purchaser and his/her employees to fit, adapt and repair the products and the spare parts in consideration of the payment by the purchaser of the purchase prices form time to time applicable in accordance with this contract in respect of the said spare parts (where applicable add: - ... and in consideration of the purchaser's undertaking hereinafter given). | | | Ex. II ID/WG.400 |
| ENTRY INTO FORCE R | 3.1 This contract shall enter into force on its signature by the parties or, if signed separately, on the signature of the last subscribing party. | | | | |
| PRELIMINARY OBLIGATIONS R | 4.1. Within a period of days/weeks of the entry into force of this contract the supplier shall investigate the stock of products and spare parts present in the purchaser's country and shall determine the type and number of spare parts to be held by the purchaser in order to establish a level of stock which would be considered necessary in good trading practice in the business of the supply of spare parts having regard to the products present in the pruchaser's country, any orders for products as yet unfulfilled of which the supplier is aware, the existing stock of spare parts in the purchaser's country and the time required for the fulfillment of orders for spare parts. | | 4.1. Within days/weeks of the entry into force of this contract the supplier will recommend to the purchaser, by notice in writing, the number and type of spare parts which the supplier judges are necessary to be held by the purchaser in order to constitute a stock level which in good trading practice in the business of the supply of spare parts would be considered necessary having regard to the number of products present in the purchaser's country and the stock of spare parts existing in the purchaser's country. | | Ex. I ID/WG.400/ Ex. III Japan |
| | 4.2. The supplier shall, within a period of days/weeks from the entry into force of this contract: | 4.2. The supplier shall, within a period of days/weeks from the entry into force of this contract: | 4.2. The supplier shall, with all reasonable speed after receipt of the purchaser's first order deliver the spare parts thus ordered by the purchaser and, further, shall furnish the purchaser with | | Ex. I+II ID/WG.400/ Ex. III YDE Co.Ltd Japan |

HEADINGS | EXAMPLE I | EXAMPLE II | EXAMPLE III | ADDITIONS | SOURCE

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| | (a) deliver to the purchaser, in accordance with the provisions hereinafter appearing, the spare parts required to establish the necessary stock level referred to in sub-paragraph 1, and<br><br>(b) give to the purchaser advice and information to enable the purchaser to evaluate the said stock level and his/her future requirements. | (a) deliver to the purchaser, in accordance with the provisions hereinafter appearing, the spare parts required to establish the necessary stock level referred to in sub-paragraph 1, and<br><br>(b) concurrent with or within days/weeks of the said delivery of spare parts the supplier shall, at his/her own expense, send to the purchaser's country the skilled staff specified in Annex of this contract which staff will, at the supplier's expense, spend a period of weeks/months in the purchaser's business training the purchaser and his/her employees in the skills necessary for the management and operation of a business for the maintenance and repair of the products and the sale, promotion and fitting of the spare parts. | advice and information to enable the purchaser to evaluate his/her additional or furture requirements. | | |
| | 4.3. The supplier will, within days/weeks of the entry into force of this contract furnish to the purchaser the documentation listed in Appendix of this contract. | | | | Ex. I+II<br>ID/WG.400 |
| | 4.4. During the period of months from the date of delivery of the spare parts referred to in subparagraph 2 the purchaser shall be entitled to return all and any of the said spare parts then not used, sold or damaged by the pruchaser and the supplier shall accept such a return paying to the purchaser or crediting the purchaser with the prices of the said returned spare parts. | 4.4. During the period of months from the date of delivery of the spare parts referred to in sub-paragraph 2 the purchaser shall be entitled to return all and any the spare parts then not sold, used or damaged by the purchaser and the supplier shall accept such a return paying to the purchaser the total of the purchase prices of the said returned spare parts and the costs and expenses paid by the purchaser in their regard. | | | |
| SUPPLIER'S OBLIGATIONS N | 5.1. In addition to the spare parts delivered by the supplier in accordance with Clause 4 hereof the supplier shall deliver to the purchaser the spare parts ordered by the latter during the period of years (herein | | | | Ex. I<br>ID/WG.400/<br>+ Netherl |

| HEADINGS | EXAMPLE I | EXAMPLE II | EXAMPLE III | ADDITIONS | SOURCE |
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| | referred to as "the currency of this contract") from the entry into force of the contract.<br><br>2. (a) The supplier shall not during the currency of this contract discontinue the supply of any of the spare parts listed in his/her catalogue at the date of the purchaser's signature of this contract save and unless he replaces the said spare part with one having an identical function and meeting the specifications detailed in Annex of this contract.<br><br>(b) Should the supplier, during the currency of this contract, manufacture or distribute spare parts in addition to or in replacement of the spare parts appearing in the supplier's catalogue at the date of the purchaser's signature of this contract, the supplier shall inform the purchaser thereof immediately such new or replacement spare parts are marketed.<br><br>(c) The provisions in this contract regarding the prices of spare parts shall apply in respect of any new or replacement spare parts.<br><br>5.3. The supplier shall, at his/her own cost, furnish the purchaser with a detailed list of the spare parts comprised in any product manufactured by him/her and exported to the purchaser's country and shall provide the purchaser with assistance in establishing a necessary stock level in respect of each new type of product manufactured by the supplier and exported by him/her to the purchaser's country.<br><br>5.4. The supplier will grant the purchaser the benefit of the status of most favoured customer. | | | | |
| ORDERS O | 6. In the usual course the purchaser shall place orders by remitting the same to the supplier by registered post. Should the purchaser require the delivery of any spare part as a matter of urgency, the pruchaser shall be entitled to use the fastest means available to inform the supplier thereof but will follow-up such an order with one delivered by registered post. The supplier undertakes to give the purchaser what assistance he/she can render in ensuring a speedy delivery of such spare parts as are required urgently. | | | | Ex. I 6<br>ID/WG.400/2 |

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| PACKING R | 7.1. The references to the prices of spare parts in this contract include the packing of the said spare parts in accordance with this Clause. | 7.1. The supplier shall pack the spare parts in accordance with his/her standard conditions of sale. The cost of any additional packing required will be borne by the purchaser. The purchase prices of the spare parts quoted in this contract include only such packing as is indicated in the supplier's standard conditions of sale. | | | Ex. I 7 ID/WG.400/2<br>Ex. II 7 YDE Co.Ltd., Japan |
| | 7.2. The supplier shall pack the spare parts in the manner required to prevent their damage or deterioration during transit to their final destinatination. The packing shall be sufficient to withstand, without limitations, rough handling, exposure to extreme temperatures, salt and precipitation and open storage during transit, and the possibility that the spare parts will be stored for a lengthy period at their port of unloading. | 7.2. The requirements of the packing of the spare parts will be decided by the supplier and the purchaser jointly. | | | |
| | 7.3. The markings within and outside the packages and the instructions, if any, of the packed spare parts must be indicated by diagrams and accompanied by instructions in the purchaser's language. | 7.3. The instructions, if any, of precautions to be taken in the handling of the packed spare parts and the markings within and outside the packages will be in an international language. | | | |
| | 7.4. The supplier will be liable for any damage caused to the spare parts by reason of any fault in the materials or design of the packing, marking or instructions. | 7.4. Once the source of any damage caused to the spare parts by reason of any fault in the material or design of the packing, the markings or instructions, has been identified, the parties will negotiate a settlement of the purchaser's claim in respect of such damage. | | | |
| TECHNICAL DOCUMENTATION AND TOOL KITS R | 8.1. The supplier shall ensure that each batch of any one spare part is accompanied by a free copy of the descriptive and instruction manual necessary for the fitting and operation of the said spare parts and, where appropriate, by a copy of the technical data sheet relating to the said spare parts in the purchaser's language (or in the language). | | | | Ex. I 8 ID/WG.400/2 |

| HEADINGS | EXAMPLE I | EXAMPLE II | EXAMPLE III | ADDITIONS | SOURCE |
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| | 8.2. The supplier will also provide, free of charge with each batch of any one spare part, a tool kit containing such implements or tools as are necessary for the proper fitting, operation, maintenance and repair of each type of spare part and of which the purchaser could not reasonably be expected to be in possession.<br><br>8.3. The supplier will furnish the purchaser with the documents listed in Appendix of this contract at intervals. | | | | |
| DISPATCH TRANSPORT AND DELIVERY N | 9.1. On receipt of orders from the purchaser the supplier shall, with due speed and efficiency, dispatch the spare parts ordered to the pruchaser.<br><br>9.2. Delivery of the spare parts shall be made FOB, CIF etc. as may from time to time be agreed between the parties and the supplier shall notify the purchaser in good time of the quantities of spare parts to be delivered, their packed size and weight and of the proposed method of transport and details thereof. | | | | Ex. I 9 YDE Co.Ltd., Japan<br><br>Ex. II 9 ID/WG.400/2 |
| | 9.3. The provisions regarding transport, the payment therefor, delivery, insurance and passing of risk laid down in INCONTERMS will apply to this Clause. | 9.3. The supplier will arrange for and bear all the costs and expenses of the transport of the spare parts from his/her factory to the deemed delivery of the products. | | | |
| | 9.4. Where the supplier is required to affect delivery under terms not dealt with in INCOTERMS, the supplier shall be required to meet all transport, storage and insurance expenses until delivery. | 9.4. The supplier shall arrange and pay for the insurance of the spare parts to the point of their deemed delivery and, if necessary, will name the purchaser the beneficiary of the policy. The spare parts will be insured in a freely convertible currency against loss and damage incidental to manufacture or acquisition, transportation, storage and delivery. The insurance shall be in an amount equal to 110% of the CIF value of the spare parts from "warehouse to warehouse" on an "all risks" basis, including war risks and strike clauses. | | | |

| HEADINGS | EXAMPLE I | EXAMPLE II | EXAMPLE III | ADDITIONS | SOURCE |
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| | 9.5. Delivery of the spare parts will not be deemed unless and until all the necessary documentation relating to them and their transport has been received by the purchaser. Should the spare parts arrive at their final destination before the said documentation has been received by the purchaser, the supplier will be responsible for any consequent loss. | 9.5. Delivery of the spare parts shall be deemed on the arrival of the said spare parts at the purchaser's address specified in Annex of this contract provided that delivery of the spare parts will not be deemed unless and until all the necessary documentation relating to them and their transport has been received by the purchaser. Should the spare parts arrive at their final destination before the said documentation has been received by the purchaser, the supplier will be responsible for any consequent loss.<br><br>9.6. The spare parts shall remain at the risk of the supplier until delivery thereof has been completed. | | | |
| DELAYS IN DELIVERY N | 10.1. In the usual course delivery of spare parts will be effected by the supplier within days/weeks of his/her receipt of the purchaser's order. In the case or urgent orders, the spare parts will be delivered within days/weeks of the supplier's receipt of the purchaser's notification of his/her order.<br><br>10.2. Should the supplier fail to make delivery of the spare parts within the time fixed therefor there shall be granted to the supplier an extension of the delivery period of days.<br><br>10.3. If the supplier fails to deliver the spare parts within the fixed time for delivery or within the extension thereof mentioned at subparagraph 2 of this Clause, the purchaser shall be entitled, upon giving to the supplier within a reasonable time notice in writing, to claim a reduction of the prices payable under the contract, unless it can be reasonably concluded from the circumstances of the particular case that the purchaser has suffered no loss. Such a reduction shall equal % of the prices payable under the contract which are property attributable to the spare parts which cannot, in consequence of the said failure, be put to the use intended for each compelte week of delay commencing on the due date of delivery, but shall not exceed the maximum of % of | 10.3. If the supplier fails to make delivery within the said period of grace then the said delay in the performance of the supplier's delivery obligations will render the supplier liable to the following sanctions:<br><br>- the imposition of liquidated damages;<br><br>- termination of the contract for default (if applicable add ... and forfeiture of its performance security). | | | Ex. I 10<br>ECE/574,<br>ADB/I-ADB/WB<br>+ ID/WG.400/2 |

| HEADINGS | EXAMPLE I | EXAMPLE II | EXAMPLE III | ADDITIONS | SOURCE |
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| | the purchase prices attributable to the spare parts so delayed.<br><br>10.4. Such a reduction shall be allowed when a payment becomes due or after delivery. Save as provided in subparagraph 5 of this Clause such a reduction shall be to the exclusion of any other remedy of the purchaser in respect of the supplier's failure to deliver as aforesaid.<br><br>10.5. If any portion of the spare parts in respect of which the purchaser has become entitled to the maximum reduction provided by subparagraph 3 of this Clause or in respect of which he/she would have been entitled had he/she given the notice referred to therein, remains undelivered, the purchaser may by notice in writing to the supplier, require him/her to deliver and by such last mentioned notice fix a final time for delivery which shall be reasonable taking into account such delay as has already occurred. If for any reason whatever, the supplier fails within such time to do everything that he/she must do to effect delivery, the purchaser shall be entitled by notice in writing to the supplier to terminate the contract in respect of such portion of the spare parts as are not delivered.<br><br>10.6. The purchaser shall, upon such termination, be entitled to receive from the supplier any loss suffered by the purchaser by reason of the failure of the supplier aforesaid up to an amount not exceeding the purchase prices and purchaser's expenses, properly attributable to such portion of the spare parts, as could not in consequence of the supplier's failure, be put to the use intended. | | | | |
| DELAYS IN THE PURCHASER'S ACCEPTANCE OF DELIVERY<br>0 | 11.1. Should a delay in delivery be caused by an act or omission of the purchaser, and whether such cause shall occur before or after the time or the extended time for delivery there shall be granted, subject to sub-paragraph 3 of Clause 10, such extension of the delivery period as is reasonable having regard to all the circumstances of the case.<br><br>11.2. If the purchaser fails to accept delivery on the due date he/she shall nevertheless make payment conditional upon | | | | Ex. I 11<br>ECE/730 |

| HEADINGS | EXAMPLE I | EXAMPLE II | EXAMPLE III | ADDITIONS | SOURCE |
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| | delivery as if the spare parts had been delivered. The supplier shall arrange for the storage of the spare parts at the cost and risk of the purchaser provided that if the supplier is in a position to store the spare parts in his/her premises without prejudice to his/her business, the cost of storing the spare parts will not be borne by the purchaser.<br><br>11.3. The supplier may require the purchaser by notice in writing to accept delivery within a reasonable time. Should the purchaser fail to do so within such a time, the supplier shall be entitled by notice in writing to the purchaser to terminate the contract in respect of such portion of the spare parts as is by reason of the failure aforesaid not delivered and thereupon to recover from the purchaser any loss suffered by reason of such failure up to an amount equal to the prices payable under the contract which are properly attributable to such a portion of the spare parts. | | | | |
| VERIFICATION OF APPARENT CONFORMITY<br>E | 12.1. The purchaser and, where appropriate, a representative of the supplier shall inspect each consignment of spare parts on its arrival at the point of delivery in order to verify the contents of each consignment. If any such consignment does not contain the spare parts ordered by the purchaser then:<br><br>(a) the purchaser shall pay the prices of the spare parts ordered and delivered or, if payment has already been made, shall be credited with that sum by which the payment exceeds the total of the prices of spare parts ordered and delivered.<br><br>(b) the provisions of Clause 10 shall apply in respect of spare parts ordered but not delivered.<br><br>12.2. During a period of weeks/months from the date of delivery of the spare parts the purchaser shall be entitled to reject any spare part which does not conform to this contract (excepting any defect caused after the passage of risk) provided that before the purchaser can exercise his/her right of rejection he/she shall afford the supplier an opportunity of inspecting the said spare part and to make good any defect at his/her expense within a reasonable period. | 12.2. The spare parts will be inspected to confirm their conformity with this contract on the occasion that each such spare part is put into use. The purchaser shall be entitled to reject any spare part which does not conform to this contract (excepting any defect caused after the passage of risk) provided that | | | Ex. I 12<br>ECE/730<br>+ ID/WG.400/2<br><br>Ex. II 12.2<br>ID/WG.400/2 |

| HEADINGS | EXAMPLE I | EXAMPLE II | EXAMPLE III | ADDITIONS | SOURCE |
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| | | before the purchaser can exercise his/her right of rejection he/she shall afford the supplier an opportunity of inspecting the said spare part and to make good any defect as his/her expense within a reasonable period. | | | |
| | 12.3. The purchaser's right of rejection shall also apply to spare parts which, although delivered and accepted after the time allowed for rejection, cannot properly be used without the spare parts mentioned at sub-paragraph 2 hereof.<br><br>12.4. The supplier shall be entitled to have rejected spare parts returned to him/her at his/her own risk and expense.<br><br>12.5. The spare parts shall be deemed to have been finally accepted when the period for rejection provided in this Clause has passed without the purchaser exercising his/her right in that regard. | | | | |
| PRICES N | 13.1. (a) The spare parts will be sold and delivered to the purchaser at the prices appearing in Annex ... of this contract subject to the provisions for price revision herein contained.<br><br>(b) Any spare part introduced by the supplier by way of replacement of any spare part included in the list of spare parts appearing in Annex ... of this contract shall be sold and delivered at the price of the spare part which it replaces prevailing on the date of such replacement subject to the provisions regarding price revision hereinafter appearing.<br><br>(c) Any new spare part introduced by the supplier other than as hereinbefore provided shall be sold and delivered at the price fixed by the supplier on its introduction and subject to the provisions regarding price revision hereinafter appearing.<br><br>13.2. The price of any spare part may be increased in accordance with sub-paragraph 3 hereof by the supplier on the 1st of January of each year during the currency of this contract provided that any price so increased will remain fixed for a period of 12 months. | | | | Ex. I 13<br>ID/WG.400/2 |

| HEADINGS | EXAMPLE I | EXAMPLE II | EXAMPLE III | ADDITIONS | SOURCE |
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| | 13.3. Any increase in the price of any spare part in accordance with sub-paragraph 2 hereof shall not exceed the average percentage for the year in question of the full range of general export prices for the products, spare parts, assemblies and sub-assemblies manufactured by the supplier.<br><br>13.4. The price of any spare part may be reduced at any time.<br><br>13.5. Any increase in the price of spare parts which the purchaser consideres excessive shall be justified and reconsidered by the supplier. | | | 13. Notwithstanding anything hereinbefore contained in this regard the supplier shall be entitled to increase the prices of spare parts if a violent change in the international economic situation occurs. A violent change in the international economic situation will be deemed to exist only when the cost of living index in both the supplier and the purchaser's country has, at the end of a six month period, increased by an amount in excess of %. | Add.I 13<br>YDE Co.Ltd., Japan |
| | 13.6. Spare parts sold and delivered to the purchaser shall be so sold and delivered at the prices prevailing when the order was placed.<br><br>13.7. The purchaser shall be entitled to the rebate specified in Annex of this contract. | | | | |
| PAYMENT N | 14.1. The purchaser shall pay the prices for the spare parts sold and delivered in accordance with this contract within days of the submission of an invoice by the supplier.<br><br>14.2. The supplier shall submit an invoice to the purchaser only on the delivery of spare parts. | 14.2. The supplier shall submit an invoice to the purchaser only on the dispatch of the spare parts from the supplier's place of business provided that payment on foot of the said invoice will not become due until such time as the purchaser has received all the documents relating to the spare parts in question and their transport to enable delivery to be effected. | | | Ex. I+II 14<br>ECE/730<br>+ ID/WG.400/2 |

| HEADINGS | EXAMPLE I | EXAMPLE II | EXAMPLE III | ADDITIONS | SOURCE |
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| | 14.3. Payment shall be effected by the purchaser in the ...currency by way of ... (bills of exchange, letters of credit etc)<br><br>14.4. A payment conditional on the fulfillment by the supplier of a term shall not be due until such an obligation has been fulfilled, unless the failure of the supplier is due to an act or omission of the purchaser.<br><br>14.5. If the purchaser delays in making any payment and the delay is not due to an act or omission of the supplier, the supplier may, after written notice sent in good time to the purchaser, require payment by the purchaser of interest at the rate of % on the sum due, per annum for each week or a part of a week in which the said payment remains outstanding from the date which is 30 days from the day the payment was due. | 14.5. If the purchaser delays in making any payment and the delay is not due to an act or omission of the supplier, the supplier may, after written notice sent in good time to the purchaser:-<br><br>(a) postpone the fulfillment of his/her own obligations until such payment is made; and<br>(b) recover interest on the sum due at the rate of % per annum for each week or part of a week in which the said payment remains outstanding from the date which is 30 days from the day the payment was due. | | 14. Any advance payments made by the purchaser are payments on account and do not constitute a deposit, the abandonment of which would entitle either party to terminate the contract. If delivery has been made before payment of the purchase prices for spare parts from time to time delivered, the spare parts delivered and unpaid for shall, to the extend permitted by the law of the purchasers's country, remain the property of the supplier until such payment has been effected. If the law of the purchaser's country does not permit the supplier to retain the property in the spare parts, the supplier shall be entitled to the benefit of such other rights in respect thereof as such law permits him/her to retain. The purchaser shall give the supplier every assistance in taking any measures required to protect the supplier's right of property or such other rights as aforesaid. | Add. 14 ECE/574 |

| HEADINGS | EXAMPLE I | EXAMPLE II | EXAMPLE III | ADDITIONS | SOURCE |
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| WARRANTIES N | 15.1. The supplier warrants that the spare parts to be delivered to the purchaser:- | | | | |
| | (a) will be new, unused, of the most recent or current models and will incorporate all recent improvements in design and materials; | | | | Ex. I 15.1(a) ADB/I-ADB/WB |
| | (b) will have no defect arising from the design, workmanship or materials or from any act or omission of the supplier that may develop under normal use of the supplied products in the conditions obtaining in the purchaser's country; | | | | Ex. I 15.1(b) ADB/I-ADB/WB |
| | (c) are fit for the purposes for which spare parts of the same description would ordinarily be used in the conditions obtaining in the purchaser's country; | | | | Ex. I 15.1(c) +(d) A/CONF.97/18 |
| | (d) are fit for the particular purposes and in the conditions expressly or impliedly made known by the purchaser to the supplier; | | | | Ex. I 15.1.Op YDE Co.Ltd., Japan |
| | (e) possess the qualities of spare parts which the supplier has held out to the purchaser as samples or models; | | | | Ex. I 15.1(e) A/CONF.97/18 |
| | (f) are of a standard and quality fit for the purpose or purposes for which spare parts of the kind sold and delivered under this contract are commonly bought as is reasonable to expect having regard to the prices, descriptions and all other relevant circumstances; | | | | Ex. I 15.1(f) Common law ("mechantable quality") |
| | (g) conform with the specifications; and | | | | Ex. I 15.1(g) ID/WG.400/2 |
| | (h) are free from any right or claim of a third party. | | | | Ex. I 15.1(h) A/CONF.97/18 |
| | 15.2.(a) The supplier further warrants that the spare parts will conform with the standards and rules following from the laws and regulations of the purchaser's country that are in force at the time when each consignment of spare parts leaves supplier's the factory. | 15.2. The spare parts supplied under this contract from time to time shall conform to the standards mentioned in the specifications and, where no applicable standard is mentioned, to the authoritative standard appropriate to the supplier's country. The said standards shall be the latest issued by the concerned institution immediately prior to the date of dispatch of the spare parts. | | | Ex. I 15.2 ID/WG.400/2 |
| | (b) It shall be the duty of the purchaser to inform the supplier of any changes in the said rules and standards as soon as they occur. | | | | Ex. II 15.2 ADB/I-ADB/WB |

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| GUARANTEE N | 16.1. The supplier guarantees that the spare parts to be sold and delivered to the purchaser will be and remain as warranted for a period of months ("the guarantee period") from the date on which each spare part is first used. | 16.1. The supplier guarantees that the spare parts to be sold and delivered to the purchaser will be and remain as warranted for a period of months/years from the date of delivery of each spare part. | | | Ex. I+II 16.1+2<br>ID/WG.400/2 |
| | 6.2. The purchaser shall notify the supplier forthwith of the occasion of the first use of each spare part. | | | 16. A fresh guarantee period equal to that stated sub-paragraph in this Clause shall apply, under the same terms and conditions as those applicable to the original spare parts, to spare parts repaired or supplied in replacement of defective spare parts and to parts renewed in pursuance of this Clause. This provision shall not apply to the remaining spare parts the guarantee period of which shall be extended only by a period equal to the period during which such spare parts are out of action as a result of a defect covered by this Clause. | Add. 16<br>ECE/574 |
| | 16.3. The supplier undertakes to remedy any defect or non-conformity appearing in the spare parts contrary to the warranties hereinbefore given during the guarantee period.<br><br>16.4. Where the purchaser wishes to avail him-/herself of the guarantee, he/she shall notify the supplier in writing without delay of any defect which has appeared. On receipt of such notification the supplier shall, if the defect is one that is covered by this Clause, at his/her option:<br><br>(a) repair the defective spare part on site; or<br><br>(b) have the defective spare part returned to him/her for repair; or<br><br>(c) replace the defective spare part. | | | | Ex. I 16.3, 4 5+6<br>ID/WG.400/2<br>ECE/730<br>+ ECE/574 |
| | 16.5. The supplier shall bear all the expenses and costs arising out of and incidental to the implementation of this guarantee. | 16.5. Unless otherwise agreed, the purchaser shall bear the cost and risk of transport of defective spare parts returned to the supplier and of spare parts supplied in replacement thereof between the place where the spare parts are | | | |

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| | | situated and the place where delivery of spare parts is to be effected under this contract. | | | |
| | 16.6. In addition to the costs and expenses referred to in sub-paragraph 5 hereof, if the defective spare part has been fitted or adapted for use in a product, the supplier shall pay or credit to the purchaser a sum of in respect of each spare part to cover the cost of disembling the defective spare part from the product and of re-fitting or re-adopting the repaired or replaced spare part. | 16.6. In addition to the costs and expenses referred to in sub-paragraph 5 hereof, if the defective spare part has been fitted or adapted for use in a product the supplier shall pay the purchaser the expenses and costs arising out of the disassembly of the defective spare part and the re-fitting or re-adapting of the repaired or replaced spare part. | | | |
| | 16.7. If the supplier, having been notified, fails to remedy any defect or non-conformity in the spare parts within a resonable period, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense, and without prejudice to any other rights which the purchaser may have against the supplier under this contract. | | | | Ex. I 16.7+8<br>ADB/I-ADB/WB<br>+ ECE/574 |
| | 16.8. The said guarantee shall only apply to defects which appear under proper use. It does not cover defects due to causes arising after the risk in the products has passed. In particular, it does not cover defects arising from the purchaser's faulty maintenance, from alterations carried out without the supplier's consent in writing or from repairs carried out improperly by the purchaser save such repairs as may be carried out by the purchaser under this Clause. | | | 16.8. The purchaser may, without prejudice to any remedy for breach of contract, by written notice of default sent to the supplier, terminate the contract in whole or in part if the supplier fails to perform his/her guarantee obligations under this contract and does not cure that default within days ... after receipt of the default notice from the purchaser. | Add. 16<br>ADB/I-ADB/WB |
| | 16.9. The guarantee hereinbefore given shall not be interpreted so as to limit the purchaser's remedies, either in time or scope of relief, in respect of any breach of warranty by the supplier. In particular, the supplier will remain liable in respect of any defect in the products or parts thereof rendering them unmerchantable which would not be apparent on a reasonable examination. | 16.9. The supplier is liable in accordance with this contract for any lack of conformity which exists at the time when the risk passes to the purchaser, even though the lack of conformity becomes apparent only after that time. The supplier is also liable for any lack of conformity which occurs after the time indicated in the proceeding sentence and which is due to a breach of any of his/her obligations including a breach of the guarantee that for a period of time the spare | 16.9. Should a latent defect in the design, manufacture, materials, workmanship or assembly of the spare parts or any part thereof become apparent, the purchaser may at any time, whether within or outside the guarantee period, require the supplier to remedy the defect in the said spare parts or part at his/her own expense whether on site or at his/her own factory. Should the supplier fail to remedy such a latent defect within ... days of his/her receipt of | | Ex. I 16.9<br>Common law<br>"letent deject")<br>Ex. II 13.9<br>A/CONF.97/18<br>Ex. II 13.9<br>ID/WG.400/2 |

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| | | parts will remain fit for their ordinary purpose or for the particular purpose required by the purchaser and/or that the spare parts will retain specified qualities or characteristics. | notification thereof from the purchaser, the purchaser shall be entitled to terminate the contract in so far as it relates to those defective spare parts and any spare parts whose use is dependant on such defective spare parts whereupon the supplier shall take back the said spare parts in respect of which the contract is terminated at the prices paid and in addition, pay to the purchaser all the expenses, costs, duties and taxes paid by the purchaser in respect of such spare parts. A latent defect shall, in this contract, be taken to mean any defect in the design, manufacture, material, workmanship or assembly of any spare part which reduces or impedes the spare part's performance, whether by immobilizing the spare part or rendering it less efficient, appearing several times in the same spare part or in several spare parts of the same kind. | |
| PURCHASER'S UNDERTAKING O | 17.1. While this contract is in force or, where part of this contract is not in force in accordance with this contract, as regards the part hereof remaining in force, the purchaser shall not buy spare parts fulfilling a function or capable of fulfilling a function which those available from the supplier fulfill from any other supplier of spare parts. | | | | |
| THIRD PARTY INDEMNITY R | 18.1. The supplier shall indemnify and save harmless the purchaser in respect of any claim by third parties relating to industrial property rights in the spare parts.<br><br>18.2. The supplier shall indemnify and save harmless the supplier against any claim made by a user, third party or assign against the purchaser arising out of any damage resulting from a latent defect in any of the spare parts. | | | | Ex. I 18<br>ID/WG.400/2 |

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| IMPORT AND EXPORT LICENSES AND TAXES O | 19.1. The supplier shall be entirely responsible for all taxes, stamp duties, licence fees and other such levies imposed outside the purchaser's country. The supplier shall ensure the fulfillment of the formalities and shall obtain the authorizations necessary for the export of the spare parts to the purchaser's country.<br><br>19.2. The purchaser shall be entirely responsible for all taxes, stamp duties and other levies imposed inside the purchaser's country. The purchaser shall ensure the fulfillment of the formalities and shall obtain the authorizations necessary for the import of the spare parts to the purchaser's country. | | | | Ex. I 19<br>ADB/I-ADB/WB |
| OWNERSHIP OF DOCUMENTS R | 20.1. All the documents, drawings and other informative materials furnished by the supplier to the purchaser within the context of this contract will become the property of the purchaser. | | | | Ex. I 20<br>ID/WG.400/2 |
| CHANGE ORDERS O | 21.1. The purchaser shall be entitled to alter or amend any order placed by him/her at no additional cost to him/her, provided that the supplier receives notificiation of the alteration or amendment before dispatching the spare parts originally ordered. Should the purchaser desire to alter or amend any order after the ordered goods have been dispatched by the supplier he/she shall pay to the supplier all the costs and expenses of the delivery of the spare parts no longer wanted by the purchaser and shall return such unwanted spare parts at his/her own cost and risk. | | | | Ex. I 21<br>ADB/I-ADB/WB |
| ASSIGNMENT R | 22.1. The supplier shall not assign, in whole or in part, his/her obligations to perform under this contract, except with the purchaser's prior written consent. | | | | Ex. I 22<br>ADB/I-ADB/WB |
| NOTICES R | 23.1. Any notice given by one party to the other pursuant to this contract shall be sent in writing or by telegram or telex cable and confirmed in writing to the address specified for that purpose in Annex of this contract. A notice shall be effective when delivered or on the notice's effective date, which ever is later. | | | | Ex. I 23<br>ADB/I-ADB/WB |

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| TERMINATION | 24.1. Termination for default of the supplier<br>The purchaser may, without prejudice to any other remedy for breach of contract but subject to the other terms of this contract, by written notice of default sent to the supplier, terminate this contract in whole or in part:<br><br>(a) if the supplier fails to deliver any or all the spare parts within the time periods specificed in the contract or any extension thereof granted by the purchaser pursuant to Clause 10; or<br><br>(b) if the supplier fails to perform any other obligations under the contract; or<br><br>(c) if the supplier, in either of the above circumstances, does not cure his failure within a period of thirty days (or such longer period as the purchaser may authorize in writing) after receipt of the default notice from the purchaser.<br><br>In the event that the purchaser terminates the contract in whole or in part pursuant to this subparagraph, the purchaser may procure, upon such terms and in such manner as he/she deems appropriate, spare parts similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs of such similar spare parts. However, the supplier shall continue performance of the contract to the extent it is not terminated.<br><br>24.2. Termination for insolvency by the purchaser<br>The purchaser may at any time terminate the contract by giving written notice to the supplier, without compensation to the supplier, if the supplier becomes bankrupt or otherwise insolvent, provided that such termination will not prejudice or affect any right of action or remedy which has occured or will accrue thereafter to the purchaser.<br><br>24.3. Termination by the supplier<br>The supplier may terminate this contract or part thereof by giving notice in writing to the purchaser, should the purchaser fail to accept delivery of spare parts within a reasonable time of their being ready for delivery. Such termination shall only apply to those spare parts of which the purchaser fails to accept delivery. Upon such termination the supplier will be entitled to | 24.1. Termination for default of the supplier. The purchaser may terminate the contract in whole or in part by giving notice in writing to the supplier, should the supplier fail to deliver spare parts within the time periods specified in this contract or any extension thereof granted by the purchaser pursuant to Clause 10 hereof. The said termination will apply, at the election of the purchaser, to the spare parts undelivered and the spare parts which, although delivered, cannot be properly used without the undelivered spare parts. Where the purchaser so terminates the contract he/she shall be entitled to recover any payment which he/she has made, both in respect of all the spare parts undelivered and in respect of the spare parts which, although delivered, cannot be properly used without the undelivered spare parts, to reject the spare parts delivered which are unuseable and to recover any expenses properly incurred in performing the contract in respect of such spare parts. | | 24. Add. I<br>Termination by the supplier.<br>The supplier may terminate the contract or part thereof by giving notice in writing to the purchaser, should the purchaser fail to pay for the spare parts or any part thereof within the time periods specified in this | Ex. I 24.1, 2+3<br>ADB/I-ADB/WB<br><br>Ex. II 24<br>ECE/574<br><br>Add.I 24<br>ECE/574 |



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| | recover from the purchaser any loss suffered by reason of the purchaser's said failure up to the amount equal to the prices payable under the contract which are properly attributable to such spare parts. | | | contract or any extension thereof granted by the supplier pursuant to Clause 14 hereof. Where the supplier so terminates this contract he/she shall be entitled to recover any payment due in respect of delivered spare parts and all expenses properly incurred by him/her in the performance of the contract. | |
| | | | | 24. Add.II<br>Termination for the purchaser's convenience. The purchaser may, by written notice sent to the supplier, terminate the contract, in whole or in part, at any time for his/her convenience. The notice of termination shall specify that termination is for the purchaser's convenience, the extent to which performance under the contract is terminated, and the date upon which such termination becomes effective. The spare parts which are ready for shipment within thirty days after the supplier's receipt of notice of termination shall be purchased by the purchaser at the contract terms and prices. | Add.II 24<br>ADB/I-ADB/WB |
| RIGHTS AT TERMINATION N | 25.1. Termination of the contract, from whatever cause arising, shall be without prejudice to the rights of the parties accrued under this contract. | | | | Ex. I 25<br>ECE/574 |
| FORCE MAJEURE N | 26.1. Any circumstances beyond the control of the parties intervening after the formation of the contract and impeding its reasonable performance shall be considered as cases of relief. For the purposes of this Clause circumstances not due to the fault of the party invoking them shall be deemed beyond the control of the parties. | 26.1. Notwithstanding the provisions of Clauses 10 and 16 the supplier shall not be liable for forfeiture of his/her performance security, if any has been given, liquidated damages or termination for default, if and to the extent that his/her delay in performance or other failure to perform his/her obligations under the contract is a result of an event of force majeure. | | | Ex. I 26<br>ECE/730<br><br>Ex. II 26<br>ADB/I-ADB/WB |

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| | 26.2. The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay on the intervention and on the ceasation thereof. | 26.2. For the purposes of this Clause "force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence. Such events may include but are not restricted to, acts of the purchaser, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight imbargoes. | | | |
| | 26.3. Where by reason of any of the circumstances referred to at subparagraph 1 of this Clause the performance of the contract within a reasonable time becomes impossible, either party shall be entitled to terminate the contract by notice in writing to the other party and in that event there shall be such restitution, if any, whether by way of repayment of money, return of goods, or otherwise as shall be just and as the circumstances referred to at subparagraph 1 of this Clause may permit. | 26.3. If a force majeure situation arises the supplier shall promptly notify the purchaser in writing of such a condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform his/her obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means of performance not prevented by force majeure. | | | |
| | | | | 26. If the party's failure to perform is due to the failure of a third party whom he/she has engaged to perform the whole or part of the contract, that party shall be exempt from liability only if:<br><br>(a) he/she is exempt under subparagraph 1 of this Clause, and<br>(b) the person whom he/she engaged would be so exempt if the provisions of that subparagraph where applied to him/her. | Add. 26<br>A/CONF.97/18 |

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| LIMITATION OF DAMAGES R | 27.1. Damages for breach of contract by one party shall consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters which he/she then knew or ought to have known, as a possible consequence of the breach of contract. | | | | Ex. I 27.1<br>A/CONF.97/18 |
| | 27.2. The party who sets up a breach of the contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that he/she can do so without unreasonable inconvience or cost. Should he/she fail to do so, the party guilty of the breach may claim a reduction in the damages. | | | | Ex. I 27.2<br>ECE/574 |
| LANGUAGE R | 28. All the documents, information and other written materials to be furnished under this contract by the supplier shall be so furnished in the .... language. | | | | |
| RESOLUTION OF DISPUTES R | 29.1. The purchaser and the supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with this contract. | 29.1. Any dispute arising out of or in connection with the contract, which the parties have been unable to settle by agreement shall be settled finally out of court by arbitration by the arbitral body specified in Annex of this contract. | | | Ex. I 29<br>ADB/I-ADB/WB<br>Ex. II 29<br>ECE/574 |
| | 29.2. If, after thirty days from the commencement of such informal negotiations, the purchaser and the supplier have been unable to resolve amicably a contract dispute, either party may require that the dispute be referred for resolution to arbitration in accordance with the UNCITRAL Arbitration Rules. | | | | |
| APPLICABLE LAW N | 30. This contract shall in all respects be governed by and be interpreted in accordance with the laws of the purchaser's country. | 30. This contract shall, in all respects, be governed by and be interpreted in accordance with the laws of the supplier's country. | | | Ex. I 30<br>ADB/I-ADB/WB<br>Ex. II 30<br>UNCITRAL |

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| DURATION OF THE CONTRACT O | 31. This contract shall continue in accordance with the terms hereof for a minimum period of years from the date of entry into force. At the conclusion of the said period of years the parties will continue to trade in accordance with the terms of this contract unless one party notifies the other of his/her desire to terminate the contract. Such notice of termination shall be effective on the expiry of a period of months from the date of its receipt by the other party. | | | | Ex. I 3<br>ID/WG.400/2 |

SOURCES:

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| ID/WG.400/2 | Items to be included in Model contracts for the Import, Assembly and Manufacture of Agricultural Equipment, Including Training; Model Licensing Agreement<br><br>UNIDO, 21 July 1983 |
| ADB/I - ADB/WB | Sample Bidding Documents: Procurement of Goods<br><br>Asian Development Bank, Inter-American Development Bank, the World Bank, September 1983 |
| YDE Co. Ltd., Japan | Opinion of Specialists from Japan submitted through Yanmar Diesel Engine Co., 15 February 1983 |
| Netherlands | Opinion of Specialists from the Netherlands submitted through the Permanent Mission of the Kingdom of the Netherlands to the United Nations (Vienna), 22 Febrary 1984 |
| ECE/S74 | General Conditions for the Supply of Plant and Machinery for Export,<br><br>UNECE, December 1955 |
| ECE/730 | General Conditions of Sale for the Import and Export of Durable Consumer Goods and of Other Engineering Stock Articles, No. 730<br><br>UNECE, March 1961 |
| A/CONF.97/18 | Final Act of the United Nations Conference on Contracts for the International Sale of Goods<br><br>UN General Assembly, 10 April 1980 |